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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 722/2016**

OZONE KLV JV

..... Petitioner

Through: Mr T.A. Francis and Mr Mahesh
Katyayan, Advocates.

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through: Mr L.K. Passi, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **22.12.2016**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, *inter alia*, praying that the respondent be directed to appoint an arbitrator to adjudicate the disputes between the parties.

2. The petitioner states that it was awarded the work for construction of a bus queue shelter of stainless steel design for the respondent (hereafter DTC) at various locations in Delhi and an agreement dated 30.10.2009 was entered into between the parties. It is stated that certain disputes have arisen in relation to the said agreement and in terms of the dispute resolution clause, the petitioner formally submitted the disputes for an amicable settlement as contemplated under the disputes resolution clause. It is stated that various conciliation meetings were held but no settlement could be reached. Thereafter, the petitioner invoked the arbitration clause by a letter dated 06.08.2016. However, the respondent has not appointed an arbitrator as yet.

3. The agreement between the parties includes an arbitration clause and the relevant extract of which is set out below:-

“72.2 Arbitration

(a) Procedure

Subject to the provisions of Clause 72.1, any Dispute, controversies or claims between the Parties, save where a decision of the Engineer/Employer or any other person has been made final and binding under the contract, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. Such disputes shall be referred to the Sole Arbitrator to be appointed or nominated by the Managing Director & ECO of DIMTS. The Party invoking the arbitration clause shall give a notice of its intention to proceed for the arbitration. Such notice shall provide details for the claims alongwith the amount therefore. If within 30 (thirty) days of receipt of such notice/intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.”

4. The learned counsel appearing for the respondent does not dispute the existence of the agreement or the arbitration clause. He also does not dispute that the efforts of the parties to resolve the disputes amicably have failed. He submits that pursuant to the petitioner’s letter dated 06.08.2016, the respondent has requested its Managing Director for appointing an arbitrator and it is expected that an arbitrator would be appointed shortly.

5. Since the arbitration clause is not disputed, an arbitrator is required to be appointed to adjudicate the disputes between the parties. Since the MD of

DTC had not appointed an arbitrator prior to the petitioner moving this Court, the respondent has forfeited its right to do so. (See: **Datar Switchgear Ltd v. Tata Finance Ltd:** (2000) 8 SCC 151).

6. At this stage, the learned counsel for the petitioner requests that an arbitrator be appointed under the rules of Delhi International Arbitration Centre (DIAC). The learned counsel for DTC states on instructions that DTC has no objection if the parties are referred to DIAC.

7. Accordingly, with the consent of the parties, it is directed that an arbitrator be appointed under the Rules of DIAC. The representatives of the parties shall appear before the Co-ordinator, DIAC on 06.01.2017 at 11:00 AM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

8. The petition stands disposed of.

VIBHU BAKHRU, J

DECEMBER 22, 2016
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